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File No. 19-29192 PRG

Attorneys for Plaintiffs, Demetrio Flores-Hernandez

# UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

Demetrio Flores-Hernandez, an individual: CIVIL ACTION NO.

and Theresa Lopez, an individual and

per quod : HON.

**Plaintiffs** 

v.

UNITED STATES OF AMERICA;

DR. SAMUEL PRESCHEL, a physician;: COMPLAINT

TAIBAT GBADAMOSI, N.P., a nurse

practitioner; DR. EILEEN

MASTERSON, a physician; KENDIE :

CASTILLO, F.N.P., a nurse

practitioner; DR. SCOTT SIEGAL, a

practitioner, Dr. 50011 5120112, a

physician NJ OCEAN HEALTH

INITIATIVE, INC. (OHI), a business

entity; John Does (1-5), fictitiously :

named physicians, nurses, and/or

individuals; Jane Does (1-5),

fictitiously named physicians, nurses,

and/or individuals; ABC Companies

(1-5), fictitiously named business

entities; JOHN DOE, MD 1-5, a

fictitiously named medical doctor

Defendants

The Plaintiff, Demetrio Flores-Hernandez, an individual and his wife, Theresa

Lopez, individually and per quod, residing at 167 Lucy Road, Township of Lakewood, County of Ocean and State of New Jersey, by way of Complaint against the Defendants does say:

## **INTRODUCTION**

- 1. Plaintiff Estate files this Complaint against the defendant, United States of America, pursuant to the Federal Tort Claims Act ("FTCA") 28 U.S.C. sec. 1346(b), and 28 U.S.C. sec. 1331.
- 2. Plaintiff also files this Complaint against individual defendants, Dr. Samuel Preschel, Taibat Gbadamosi, MD, Dr. Eileen Masterson, Kendie Castillo, F.N.P., Dr. Scott Siegal, NJ Ocean Health Initiative, Inc. (herein "Ocean Health")
- 3. Plaintiff brings this civil action against the defendants for medical negligence that was discovered on or about July 11, 2019. The Plaintiff generally alleges that the United States of America and its employees including Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, MD, Dr. Eileen Masterson, Kendie Castillo, F.N.P., Dr. Scott Siegal, NJ Ocean Health Initiative, Inc. (herein "Ocean Health"), did fail to provide Mr. Flores-Hernandez with appropriate medical care that resulted in his sustaining kidney damage necessitating him to be on dialysis for several days a week and necessitating a kidney transplant.
- 4. Plaintiff alleges entitlement to money damages under Federal law for medical malpractice committed by Federal employees and/or Federal contractors that were operating through Ocean Health.
  - 5. The Plaintiff also has a currently pending Complaint under the matter entitled

Flores-Hernandez v. United State of America, et al, Case Number: 3:21-CV-13346-MAS-DEA. This original action was filed on July 6, 2021. The Defendant, United States of America (which also includes NJ Ocean Health Initiative, Inc., Talbat Gbadamosi, N.P. and Kendie Castillo, F.N.P.) took the position that the Plaintiffs failed to exhaust all administrative remedies because the Department of Health and Human Services was the appropriate entity to serve in this matter and that the Department of Health and Human Services was not served until January 26, 2021 and since the original action was instituted on July 6, 2021, that the Plaintiff had filed inside the one-hundred and eighty (180) day period and had not exhausted all administrative remedies beforehand under the Federal Tort Claims Act ("FTCA"). While the Plaintiff believed that all federal entities had appropriately been served and the initial complaint filed in this matter was filed one hundred and eightyseven (187) days after the government acknowledged service on December 31, 2020, the Plaintiff also then immediately served the Department of Health and Human Services on January 15, 2021 via Federal Express despite the government's position that the Department of Health and Human Services had not been served until January 26, 2021. However, even assuming the Department of Health and Human Services first receipt of a Notice of Claim under the FTCA was not received until January 15, 2021, then the Plaintiff would have technically filed the Complaint of July 6, 2021 within approximately eight days before the one hundred and eighty (180) days expired and since the Plaintiff currently has no way to show the date upon which the Department of Health and Human Services actually received the Complaint forwarded to them through the U.S. Department of Justice between the timeframes of January 31, 2020 and January 15, 2021 there is a question that remains as to

whether the first Complaint filed on January 6, 2021 was actually filed prior to the hundred and eight (180) days expiration date or after the hundred and eight (180) day expiration date if the Department of Health and Human Services is actually the additional Department that had to be served on top of all of the other government agencies for the United States of America that were already served and acknowledged to have been served by December 31, 2020.

- 6. The original Complaint filed in this matter on July 6, 2021 under the caption of Flores-Hernandez v. United State of America, et al, Case Number: 3:21-CV-13346-MAS-DEA, included several other physicians, upon information and belief, that worked and/or were affiliated with a United States government run facility, NJ Ocean Health Initiative, Inc., but apparently had taken the position that they are not employed with the facility even though certain medical records received from NJ Ocean Health Initiative, Inc. identify treatment and care for the Plaintiff through said physicians at that facility, that these physicians are taking the position that they are New Jersey physicians over which there is no jurisdiction for them in Federal Court other than the fact that this case includes the United States of America, NJ Ocean Health Initiative, Inc., Talbat Gbadamosi, N.P. and Kendie Castillo, F.N.P. The original Complaint in this matter filed on July 6, 2021, was filed in Federal Court and is not a matter that was originally removed from State Court to the Federal Court.
- 7. With respect to this within action that has been filed, the Plaintiff seeks to relate back the allegations made to the Complaint filed on July 6, 2021 with respect to the Defendants, Dr. Eileen Masterson, Dr. Scott Siegal, and Dr. Samuel Preschel only. With

respect to the within Complaint that has been filed as to the United States of America and its government run entities and employees of those entities, NJ Ocean Health Initiative, Inc. (OHI), Talbat Gbadamosi, N.P. and Kendie Castillo, F.N.P., this is a new Complaint not asserting any relation back to the first Complaint that was filed such that this Complaint is being timely filed and is undisputedly being timely filed within six (6) months of receipt of the August 18, 2021 denial of the Department of Health and Human services. This within Complaint is a completely new Complaint as to United States government and the related entities/individuals that they represent that has been timely filed within six (6) months of the denial under the guidelines set forth in the Federal Tort Claims Act ("FTCA"). To the extent the allegations set forth in this Complaint against the Defendant, United States of America and their related entities and individuals they represent previously identified herein, there is no request to relate back any of those allegations to the prior Complaint filed in this matter on July 6, 2021. It is a new Complaint filed as to said entities and individuals.

8. Prior to the filing of this second action, the parties did have two separate phone conferences with Magistrate Douglas Arpert where there were various discussions as to the procedural methods by which the matter may potentially go forward that included, but were not limited to, consent orders to dismiss without prejudice, potential Motions as to the dismissal of cross-claims concerning Dr. Preschel, Dr. Masterson, and Dr. Siegal as well as refiling of Complaints and Consent Orders being executed along with potential further Motions for consolidation. The Plaintiff has filed this Complaint and sought relation back to the original Complaint as to the Defendant-physicians, Dr. Preschel, Dr. Masterson, and Dr. Siegal only. The Plaintiff has not sat on its rights with respect to the filing. There has been

no dismissal of the claims against these Defendant-physicians as of the time of this filing and the Plaintiff has sought a relationship back to the original allegations included in the Complaint of July 6, 2021 as to these three (3) Defendant-physicians.

9. Further, the Plaintiff has timely filed this new Complaint as to the United States government and its related entities it represents, NJ Ocean Health Initiative, Inc. (OHI), Talbat Gbadamosi, N.P. and Kendie Castillo, F.N.P,. in a timely fashion under the Federal Tort Claims Act ("FTCA") within a hundred and eighty (180) days of receipt of the rejection notice from the Department of Health and Human Services dated August 18, 2021 and received by Plaintiff's counsel's office at some time thereafter.

#### **JURISDICTION AND VENUE**

- 10. The Court has jurisdiction over this claim against the United States of America for money damages pursuant to 28 U.S.C sec. 1346(b)(1).
- 11. The Court has ancillary jurisdiction over the defendants, Dr. Samuel Preschel, Taibat Gbadamosi, MD, Dr. Eileen Masterson, Kendie Castillo, F.N.P., Dr. Scott Siegal, Dr. Eileen Masterson, NJ Ocean Health Initiative, Inc. (herein "Ocean Health"), as these Defendants negligently provided medical services to the Plaintiff and their conduct caused and/or contributed to the Plaintiff sustaining permanent kidney damage requiring dialysis three (3) days a week and necessitating a kidney transplant.
- 12. The acts or measures giving rise to this claim occurred through various locations at Ocean Health facilities all located within Ocean County, New Jersey. Furthermore, the Plaintiff at all times resided in the State of New Jersey. Therefore, venue is properly placed in the United States District Court, District of New Jersey.

### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

- 13. On December 21, 2020, the Plaintiffs, Demetrio Flores-Hernandez and Theresa Lopez, did file a Notice of Claim (Claim Form 95-109) under the FTCA with the U.S. Justice Department which provided said notice to the U.S. Department of Health and Human Services (HHS).
- 14. As previously discussed in the introductory paragraphs, the Plaintiffs, Demetrio Flores-Hernandez and Teresa Lopez, did file a Notice of Claim under the FTCA that was acknowledged to have been received by the U.S. Department of Justice as of December 31, 2020 and then forwarded to the U.S. Department of Health and Human Services. The Plaintiff also served the U.S. Department of Health and Human Services by January 15, 2021. While the Plaintiff acknowledges the position taken by the U.S. Government concerning the initial Complaint and their position that all administrative remedies were not exhausted with respect to the filing of July 6, 2021 under the caption of Flores-Hernandez v. United State of America, et al, Case Number: 3:21-CV-13346-MAS-DEA., at this stage with the filing of this within Complaint, it is undisputed that there has been an exhaustion of administrative remedies as the rejection from the Department of Health and Human Services was sent out to the Plaintiffs on August 18, 2021 and received sometime thereafter and the Plaintiff is filing the within matter on February 14, 2022 which is within six (6) months or one hundred and eighty (180) days of receipt of the rejection letter from the Department of Health and Human Services. As such, there was an exhaustion of administrative remedies in this matter based upon the August 18, 2021 rejection letter from the Department of Health and Human Services and this within Complaint has been

timely filed within six months or one hundred and eighty (180) days thereafter as a new Complaint with no effort to relate back to the prior filing concerning said United States Government or its related entities, NJ Ocean Initiative, Inc.(OHI), Talbat Gbadamosi, N.P. and Kendie Castillo, F.N.P.

# **PARTIES**

- 15. The Plaintiff, Demetrio Flores-Hernandez, was born on November 29, 1958. The Plaintiff currently resides in the Township of Lakewood, County of Ocean, and State of New Jersey.
- 16. At the time of the incident in question, the Plaintiff, Demetrio Flores-Hernandez, and his wife, Theresa Lopez, were both residents of Ocean County.
- 17. At all times mentioned herein, the United State of America, it's employees, including Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, N.P., Dr. Eileen Masterson, Kendle Castillo, F.N.P., and Dr. Scott Siegal, were self-employed physicians and/or Nurse Practitioners and/or affiliated with the Defendant, NJ Ocean Health Initiative, Inc. (OHI), a business entity with a business address of 10 Stockton Drive, Township of Toms River, County of Ocean, and State of New Jersey.
- 18. The United States of America and, its employees, including the Defendants, Taibat Gbadamosi, N.P., Kendle Castillo, F.N.P., NJ Ocean Health Initiative, Inc. (OHI) and/or Dr. Samuel Preschel, and/or Dr. Scott Siegal, and/or Dr. Eileen Materson, John Does (1-5), and ABC Companies (1-5); did own and operate a medical center located at 10 Stockton Drive, Township of Toms River, County of Ocean, and State of New Jersey. Upon information and belief, said facility was approved and accredited by a

governmental authority including, but not limited to, the New Jersey Department of Health.

- 19. At all times mentioned herein, ABC Companies (1-5), are currently unknown business entities that are affiliated with the Defendants.
- 20. At all times mentioned herein, John Does (1-5), are fictitious physicians, nurses, and/or individuals associated with the medical care provided to the Plaintiff, Demetrio Flores-Hernandez. The Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, N.P., Dr. Eileen Masterson, Kendle Castillo, F.N.P., Dr. Scott Siegal, NJ Ocean Health Initiative, Inc. (OHI), John Does (1-5), and ABC Companies (1-5) did deviate from accepted medical standards in the medical care and treatment of Mr. Demetri Flores-Hernandez. Without limitation, said Defendants did deviate from accepted medical standards in the medical care and treatment of Mr. Demetrio Flores-Hernandez upon information and belief, as said physicians and nurse practitioners were affiliated with NJ Ocean Health Initiative, Inc., said defendants are also vicariously liable for the deviation from acceptable medical standards in the medical care and treatment of Mr. Demetrio Flores-Hernandez.
- 21. More specifically, it is further alleged that the standard of care rendered by the United States of America, it's employees, including the Defendants, Taibat Gbadamosi, N.P., Kendle Castillo, F.N.P., NJ Ocean Health Initiative, Inc. (OHI) and/or Dr. Samuel Preschel and/or Dr. Eileen Masterson and/or Dr. Scott Siegal, John Does (1-5), and ABC Companies (1-5), fell below the standard of care for patients with similar conditions. During the Defendants treatment of Mr. Flores-Hernandez, he sustained

kidney damage necessitating him to be on dialysis for several days a week and will be requiring a kidney transplant.

- 22. The Plaintiff, Demetrio Flores-Hernandez, was not made aware of the deviations from the standard of the care and treatment of his condition by the various Defendants until after he was hospitalized in July of 2019 and the harm suffered continues each day. As a result of the Defendants failure to properly treat the Plaintiff, Mr. Demetrio Flores-Hernandez, for his kidney condition and not properly advise him of said damage, Mr. Demetrio Flores-Hernandez, suffered a severe kidney dysfunction that has now left him requiring dialysis several days a week and will ultimately require a kidney transplant which most likely could have been avoided had these departures from the standard of care not occurred.
- 23. Attached to this Complaint is a copy of the Affidavit of Merit and Curriculum Vitae of Dr. Raj Kumar Krishnan, who attests as to the professional malpractice committed by the various Defendants, Dr. Samuel Preschel, Taibat Gbadamosi, N.P., Dr. Eileen Masterson, Kendle Castillo, F.N.P., Dr. Scott Siegal, NJ Ocean Health Initiative, Inc. (OHI), John Does (1-5), and ABC Companies (1-5) identified in this Complaint.
- 24. The claims of the Plaintiffs, Demetrio Flores-Hernandez and Theresa Lopez, individually and per quod, are cognizable under the New Jersey Federal Tort Claims Act. Should Defendants, the United States of America, its employees, including the Defendants, Taibat Gbadamosi, N.P., Kendle Castillo, F.N.P., NJ Ocean Health Initiative, Inc. (OHI) and/or Dr. Samuel Preschel and/or Dr. Eileen Masterson and/or

Scott Siegal, John Does (1-5), and ABC Companies (1-5), not be subject to the FTCA as to these Defendants, Plaintiffs allege common law professional negligence under New Jersey State Law.

# **GRIEF/EMOTIONAL DISTRESS**

25. Independent of the prior Counts of this Complaint, the Plaintiff, Demetrio Flores-Hernandez, and his wife, Theresa Lopez, did suffer grief, emotional distress and anguish.

# PER QUOD CLAIM - GRIEF/EMOTIONAL DISTRESS

- 26. The Plaintiff, Theresa Lopez, as the spouse of the Plaintiff, Demetrio Flores-Hernandez, and as such is entitled to the services of society.
- 27. Plaintiff, Theresa Lopez, was deprived and may be in the future deprived of her spouse consortium society and services as a result of this accident.
- 28. Plaintiff, Theresa Lopez, has incurred and may in the future be caused to incur great expenses for hospital and/or medical treatment in an effort to cure and alleviate her spouse of the injuries that he sustained.

# **LACK OF INFORMED CONSENT**

29. The Plaintiff, Demetrio Flores-Hernandez, alleges that the Defendants, the United States of America, it's employees, including the Defendants, Taibat Gbadamosi, N.P., Kendle Castillo, F.N.P., NJ Ocean Health Initiative, Inc. (OHI), and/or Dr. Samuel Preschel and/or Dr. Eileen Masterson and/or Scott Siegal, John Does (1-5), and ABC Companies (1-5), did not have informed consent from Demetrio Flores-Hernandez to perform negligent medical services to the Plaintiff and their conduct caused and/or

contributed to the Plaintiff sustaining permanent kidney damage requiring dialysis three (3) days a week and necessitating a kidney transplant.

WHERFORE, plaintiffs demand judgment against all defendants, jointly and severally, for compensatory damages, together with interest and costs of suit, as well as such other relief as the Court finds proper.

LOMBARDI & LOMBARDI

Attorneys for Plaintiffs

Date: February 14, 2022

By: \_\_\_\_

Paul R. Garelick, Esq.

PaulG@lombardiandlombardi.com

# RELATED ACTIONS

As expressed within the body of this Complaint, there is one known related action under the caption <u>Flores-Hernandez v. United State of America</u>, et al, Case Number: 3:21-CV-13346-MAS-DEA.

# **DESIGNATION OF TRIAL COUNSEL**

Paul R. Garelick, Esq., is hereby designated as Trial Counsel.

# **DEMAND FOR JURY TRIAL** (AS TO NON-FTCA CLAIMS)

Plaintiffs hereby demand a trial by jury for all non-Federal Tort Claims Act claims.

LOMBARDI & LOMBARDI, P.A.

Attorneys for Plaintiffs

Dated: February 14, 2022

By:

Paul R. Garelick, Esq.

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File No. 19-29192 PRG
Attorneys for Plaintiffs, Demetrio Flores-Hernandez

# UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

Demetrio Flores-Hernandez, an individual	: CIVIL ACTION NO.
and Teresa Lopez, an individual and	:
per quod	: HON.
1 " 1	:
Plaintiffs	•
v.	•
•	
UNITED STATES OF AMERICA;	•
DR. SAMUEL PRESCHEL, a physician;	•
TAIBAT GBADAMOSI, N.P., a nurse	: AFFIDAVIT OF MERIT
practitioner; DR. EILEEN	: N.J.S.A. 2A:53A-27
MASTERSON, a physician; KENDIE	. 11.0.0.A. 2A.35A-27
	•
CASTILLO, F.N.P., a nurse	• •
practitioner; DR. SCOTT SIEGAL, a	<b>;</b>
physician NJ OCEAN HEALTH	<b>:</b>
INITIATIVE, INC. (OHI), a business	<b>:</b>
entity; et al	:
	:
Defendants	•
STATE OF NEW YORK )	•
SS:	•
COUNTY OF Westchester)	

- Raj Kumar Krishnan, M.D., being duly sworn according to law, upon his oath deposes and says:
  - 1. I make this Affidavit pursuant to N.J.S.A. 2A:53A-27.
- 2. I am a physician and have been licensed in the State of New York since 2006. My New York State licensure number is 253654.
- 3. I am Board certified by the American Board of Internal Medicine since 2014.
  - 4. Attached hereto is a copy of my curriculum vitae.

- 5. I have reviewed the following records concerning this matter:
- a) Records of Dr. Preschel and Nurse Gbadomosi. 6 pages
   b) Medication list of Shoprite of Brick indicating
   prescriptions of Dr. Preschel and Nurse Gbadomosi. 3 pages
  - c) Records of Ocean Health Initiative, Inc. 54 pages
- d) Records of Ocean Medical Center 7/10-19 to 7/15/19. 127 pages
- e) Records of Dr. Carols Rivera 6/13/11 to 8/6/19. 141 pages
  - f) Records of Dr. Keshan Jani 11/11/19. 47 pages
- g) Records of Ocean Medical Center 6/20/19, 7/15/19, 7/28/19, 8/27/19, 9/8/19, 10/12/19. 499 pages
- h) Records of Jersey Shore Medical Center 6/24/19, 8/31/19, 6/24/19. 142 pages.
- 6. It is my opinion, within a reasonable degree of medical certainty that the care received by Mr. Demetrio Flores-Hernandez fell below the standard of care for patients with similar conditions.
- 7. Based on my review of the medical records and materials mentioned herein, I believe that there were departures in the standard of care provided to Mr. Demetrio Flores-Hernandez by Dr. Samuel Preschel, Dr. Eileen Masterson, Dr. Scott Siegal and nurse practitioners, Taibat Gbadamosi, N.P. and Kendie Castillo, F.N.P., who were members of the NJ Ocean Health Initiatives, Inc.
- 8. Based upon my review of the medical records, amongst the departures include, but are not necessarily limited to were not limited to, that Mr. Demetrio Flores-Hernandez's kidney condition, was not properly monitored, he did not receive the appropriate nephrology consult, and the medications prescribed and continued to be prescribed appear to have been inappropriate given his condition.

9. As a result of the departures from the standards of care committed by, Dr. Samuel Preschel, Dr. Eileen Masterson, Dr. Scott Siegal and nurse practitioners, Taibat Gbadamosi, N.P. and Kendie Castillo, F.N.P, who were members of the NJ Ocean Health Initiatives, Inc., the patient, Mr. Demetrio Flores-Hernandez, has suffered a severe kidney dysfunction which most likely could have been avoided had these departures from the standard of care not occurred.

10. I have no financial interest in the outcome of this case. However, I have been and may in the future be paid fees for providing medical expert services.

I certify that the statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Raj Kumar Krishpan, MD

Sworn and Subscribed to before me this 15 day of

ne me this Delay of December, 2020.

CHRISTINA ERIKA TECSY
NOTARY PUBLIC-STATE OF NEW YOUR

No. 01TE6399302

tary Public of New York My Commission Expires 10-15-2023

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# Raj Kumar Krishnan, MD

New York State License # 253654 Board Certified - American Board of Internal Medicine

General Clinical Research Center

The Pennsylvania State University

University Park, PA

	DUA	ira Certifiea - American Boara of Internal Meaicine
Alpha Omega A	MD Doctor of Medicine Alpha Omega Alpha (July 2002-June 2006)	Rosalind Franklin University The Chicago Medical School North Chicago, IL
	MS Applied Physiology (July 2001-May 2002)	The Chicago Medical School North Chicago, IL
	Medical Science Program (August 2000-June 2001)	MCP Hahnemann University Philadelphia, PA
	MS Physiology (July 1994-August 1997)	Noll Physiological Research Center The Pennsylvania State University University Park, PA
	BS Biology (August 1990-May 1994)	The Pennsylvania State University University Park, PA
Work Experience	Hospitalist and Clinical Instructor Emergency Medicine (July 2009-Present) Internal Medicine (October 2009-Present) Family Medicine (May 2011-Present)	Montefiore Medical Center Albert Einstein College of Medicine Bronx, NY
	Attending Physician Internal Medicine and Psychiatry (September 2009-Present)	NYU Langone Medical Center Bellevue Hospital Center New York, NY
· · ·	Internal Medicine (July 2009-June 2011) Assistant Director of Hospitalist Program	NYU Langone Medical Center Tisch Hospital New York, NY
	Associate Director and Instructor New York City Schools (September 2009-Present)	Mentoring in Medicine www.medicalmentor.org Bronx, NY
	Resident Physician Internal Medicine Primary Care Program (July 2006-June 2009)	NYU Langone Medical Center Bellevue Hospital Center Manhattan VA Medical Center Gouverneur Healthcare Center New York, NY
	Clinical Research Associate	Noll Physiological Research Center

Health Advisor in Community Wellness

(July 1994-July 1999)

Professional Memberships Alpha Omega Alpha (AOA)

American College of Physicians (ACP) American Medical Association (AMA) American Physiological Society (APS)

Publications In Refereed Journals Kullman, E.L., W.W. Campbell, R. K. Krishnan, K.E. Yarasheski, W.J. Evans and J.P. Kirwan. Age attenuates leucine oxidation after eccentric exercise. *Int. J. Sports Med.* 34(8): 695-699, 2013.

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